

§ 20-301.1. Notice of additional charges against dealer's account; informal appeals procedure.

(a) Notwithstanding the terms of any contract, franchise, novation, or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to charge or assess one of its franchised motor vehicle dealers located in this State, or to charge or debit the account of the franchised motor vehicle dealer for merchandise, tools, or equipment, or other charges or amounts which total more [than] five thousand dollars (\$5,000), other than the published cost of new motor vehicles, and merchandise, tools, or equipment specifically ordered by the franchised motor vehicle dealer, unless the franchised motor vehicle dealer receives a detailed itemized description of the nature and amount of each charge in writing at least 10 days prior to the date the charge or account debit is to become effective or due. For purposes of this subsection, the prior written notice required pursuant to this subsection includes, but is not limited to, all charges or debits to a dealer's account for advertising or advertising materials; advertising or showroom displays; customer informational materials; computer or communications hardware or software; special tools; equipment; dealership operation guides; Internet programs; and any additional charges or surcharges made or proposed for merchandise, tools, or equipment previously charged to the dealer; and any other charges or amounts which total more than five thousand dollars (\$5,000). If the franchised new motor vehicle dealer disputes all or any portion of an actual or proposed charge or debit to the dealer's account, the dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or distributor branch shall not require payment from the dealer, or debit or charge the dealer's account, unless and until a final judgment supporting the payment or charge has been rendered by the Commissioner or court.

(b) Any franchised new motor vehicle dealer who seeks to challenge an actual or proposed charge, debit, payment, reimbursement, or credit to the franchised new motor vehicle dealer or to the franchised new motor vehicle dealer's account in an amount less than or equal to ten thousand dollars (\$10,000) and that is in violation of this Article or contrary to the terms of the franchise may, prior to filing a formal petition before the Commissioner as provided in G.S. 20-301(b) or a civil action in any court of competent jurisdiction under G.S. 20-308.1, request and obtain a mediated settlement conference as provided in this subsection. Unless objection to the timeliness of the franchised new motor vehicle dealer's request for mediation under this subsection is waived in writing by the affected manufacturer, factory branch, distributor, or distributor branch, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 75 days after the franchised new motor vehicle dealer's receipt of written notice from a manufacturer, factory branch, distributor, or distributor branch of the charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer. If the franchised new motor vehicle dealer has requested in writing that the manufacturer, factory branch, distributor, or distributor branch review the questioned charges, debits, payments, reimbursements, or credits, a franchised new motor vehicle dealer's request to mediate must be sent to the Commissioner within 30 days after the franchised new motor vehicle dealer's receipt of the final written determination on the issue from the manufacturer, factory branch, distributor, or distributor branch.

- (1) It is the policy and purpose of this subsection to implement a system of settlement events that are designed to reduce the cost of litigation under this Article to the general public and the parties, to focus the parties' attention on settlement rather than on trial preparation, and to provide a structured opportunity for settlement negotiations to take place.

- (2) The franchised new motor vehicle dealer shall send a letter to the Commissioner by certified or registered mail, return receipt requested, identifying the actual or proposed charges the franchised new motor vehicle dealer seeks to challenge and the reason or basis for the challenge. The charges, debits, payments, reimbursements, or credits challenged by the franchised new motor vehicle dealer need not be related, and multiple issues may be resolved in a single proceeding. The franchised new motor vehicle dealer shall send a copy of the letter to the affected manufacturer, factory branch, distributor, or distributor branch, addressed to the current district, zone, or regional manager in charge of overseeing the dealer's operations, or the registered agent for acceptance of legal process in this State. Upon the mailing of a letter to the Commissioner and the manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any chargeback to or any payment required of a franchised new motor vehicle dealer by a manufacturer, factory branch, distributor, or distributor branch shall be stayed during the pendency of the mediation. Upon the mailing of a letter to the Commissioner and manufacturer, factory branch, distributor, or distributor branch pursuant to this subsection, any statute of limitation or other time limitation for filing a petition before the Commissioner or civil action shall be tolled during the pendency of the mediation.
- (3) Upon receipt of the written request of the franchised new motor vehicle dealer, the Commissioner shall appoint a mediator and send notice of that appointment to the parties. A person is qualified to serve as mediator as provided by this subdivision if the person is certified to serve as a mediator under Rule 8 of the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions and does not represent motor vehicle dealers or manufacturers, factory branches, distributors, or distributor branches. A mediator acting pursuant to this subdivision shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice.
- (4) The parties shall by written agreement select a venue and schedule for the mediated settlement conference conducted under this subsection. If the parties are unable to agree on a venue and schedule, the mediator shall select a venue and schedule. Except by written agreement of all parties, a mediation proceeding and mediated settlement conference under this subsection shall be held in North Carolina.
- (5) In this subsection, "mediation" means a nonbinding forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties.
- (6) At least 10 days prior to the mediated settlement conference, the affected manufacturer, factory branch, distributor, or distributor branch shall, by certified or registered mail, return receipt requested, send the mediator and the franchised new motor vehicle dealer a detailed response to the allegations raised in the franchised new motor vehicle dealer's written request. The mediation may be conducted by officers or employees of the parties themselves without the appearance of legal counsel. However, at least 10 days prior to the mediated settlement conference, either party may

give notice to the other and to the mediator of its intention to appear at the mediation with legal counsel, in which event either party may appear at the mediation with legal counsel.

- (7) A mediation proceeding conducted pursuant to this subsection shall be complete not later than the sixtieth day after the date of the Commissioner's notice of the appointment of the mediator; this deadline may be extended by written agreement of the parties. The parties shall be solely responsible for the compensation and expenses of the mediator on a 50/50 basis. The Commissioner is not liable for the compensation paid or to be paid a mediator employed pursuant to this subsection.
- (8) A party may attend a mediated settlement conference telephonically in lieu of personal appearance. If a party or other person required to attend a mediated settlement conference fails to attend without good cause, the Commissioner may impose upon the party or person any appropriate monetary sanction, including the payment of fines, attorneys' fees, mediator fees, expenses, and loss of earnings incurred by persons attending the conference.
- (9) If the mediation fails to result in a resolution of the dispute, the franchised new motor vehicle dealer may proceed as provided in G.S. 20-301(b) and G.S. 20-308.1. Upon the filing of a petition pursuant to G.S. 20-301(b) or a civil action pursuant to G.S. 20-308.1, the affected manufacturer, factory branch, distributor, or distributor branch shall not require payment from the dealer, or debit or charge the dealer's account, unless and until a final judgment supporting the payment or charge has been rendered by the Commissioner or court. All communications made during a mediation proceeding, including, but not limited to, those communications made during a mediated settlement conference are presumed to be made in compromise negotiation and shall be governed by Rule 408 of the North Carolina Rules of Evidence. (2001-510, s. 1; 2011-290, s. 4.)